THE HIGH COURT OF UTTARANCHAL AT NAINITAL.
A.O. No. 806 of 2001
Old FAFO No. 559 of 1992

New India Assurance Company Limited Kashipur,
Through its Branch Manager.

…..**Appellant**

Versus

1. Motor Accident Claim Tribunal/I Additional District Judge.
2. Smt. Laxmi Devi wife of late Sri Visnu Dutt Sharma.
3. Kumari Indu Sharma, daughter of late Shri Visnu Dutt Sharma.
4. Tarun Kumar Son of late Shri Visnu Dutt Sharma.
5. Mannu Son of late Shri Visnu Dutt Sharma.
(Claimants)

….. **Respondents**

Sri Anil Joshi, Adv. holding brief of Sri T.A.Khan, learned counsel for the appellant.
Sri R.P. Nautiyal, Advocate, Learned Counsel for the respondent No.1.

Date April 20, 2006.

P.C: Hon. B.S. Verma, J.

This appeal under Section 173 of the Motor Vehicles Act, 1988 **(*for short the Act*)** is directed against the judgment and award dated 20-12-1991, passed by the Motor Accident Claims Tribunal/ I Additional District Judge Nainital **(*in short the Tribunal*)** in Motor Accident Claim Petition No. 607 of 1989, Smt. Laxmi Devi and others Vs. Smt. Champa Devi and others, whereby compensation of Rs. 1,75,000/- has been awarded in favour of the claimants along with interest @ 12% per annum from the date of claim petition till the date of payment against the owner and Insurance Company-appellant.

Relevant facts are that the claimants Laxmi Devi and others filed a claim petition before the Tribunal for compensation of Rs. 3,00,000/- for the death of Sri Vishnu Datt Sharma, husband of claimant no.1, who suffered grievous injuries and lost his life in a motor vehicle accident which occurred on 26.11.1989 at about 11 a.m. involving passenger bus No. URN-9547 being driven rashly and negligently by its driver. The opposite parties contested the claim

petition and filed their written statements. The learned Tribunal framed necessary issues in the case and after recording the evidence of the parties awarded compensation of Rs. 1,75,000/- along with 12% interest in favour of the claimants as mentioned in the impugned order dated 20-12-1991.

In the appeal by the Insurance Company-appellant has assailed the impugned judgment and award on the point of negligence and quantum of compensation.

I have heard learned counsel for the parties and perused the entire evidence on record.

It may be mentioned that the Insurance Company has not obtained permission of the learned Tribunal under Section 170 of the Act. Moreover, there is no such finding of the Tribunal that the claim petition has been filed in collusion between the claimant and the person against whom the claim has been made. In such circumstances, it is not open to the Insurance Company to challenge the award passed by the Tribunal on the point of negligence or contributory negligence and also on the quantum of compensation in view of the law laid down by the Apex Court in the case of ***"National Insurance Company Ltd. Vs. Nicolletta Rohtagi and others" [(2002) 7 S.C.C..C. 456].*** The appeal is not maintainable on this score. In that case, it has been observed by the Apex Court that ***"even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending vehicle".***

The appeal preferred by the appellant is not maintainable and the same is liable to be dismissed.

The appeal is dismissed. The impugned award dated 20-12-1991 is upheld. No order as to costs.

The amount in deposit with this Court, if any, be transmitted to the Motor Accident Claims Tribunal concerned for being paid to the claimants.

(B.S. Verma, J.)

RCP